

Insurance Banking & Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

Today's Cases

Trade Practices – boycotts/interference with trade or commerce involving movement of goods between Australia and overseas destinations. See *Rural Export & Trading v Hahnheuser* (I, B, C)

Occupiers' Liability – personal injury claim involving unloading of goods and whether s151Z: Workers' Compensation Act applied. See *Kipriotis v Royal Tiles* (I)

Restraint of Trade – whether employee in breach of restraint of trade clause by removing confidential information from former employer. See *Foster v Galea* (I, B).

Deed of Release – employer/employee – whether clause preventing future court proceedings valid. See *Butler v St John of God Health Care Inc* (I, B, C)

Maintenance – whether funding agreement ought to be disclosed. See *Freeman v Kellerberrin Farmers* (I, B)



Wednesday 27 August 2008

Citigroup Pty Ltd v Mason [2008] FCAFC 151

Full Federal Court of Australia

Moore, Finn & Dowsett JJ (in Sydney)

Appellate jurisdiction of Federal Court – consent orders - Workplace Relations Amendment (Work Choices) Act 2005 (Cth) - Annual Holidays Act 1944 (NSW) - in District Court, appellant had been held liable to pay respondent former employee of Citigroup an amount in excess of \$50,000 reflecting unpaid annual leave entitlements payable on termination – consideration of Telstra Corporation Ltd v Minister for Broadband, Communications and the Digital Economy (2008) 166 FCR 64.

[Citigroup](#) (I, B)

Rural Export & Trading (WA) Pty Ltd v Hahnheuser [2008] FCAFC 156

Full Federal Court of Australia

French, Rares & Besanko JJ (in Melbourne)

s45DB(1) Trade Practices Act 1974 (Cth) - boycotts affecting trade or commerce – concerted interference with trade or commerce involving movement of goods between Australia & places outside Australia – exemption from liability where dominant purpose substantially related to environmental protection – deliberate contamination of feed for sheep intended for live export – export of all sheep delayed and export of some sheep prevented – whether primary judge correct in finding that s45DD(3) applied to exempt perpetrator from liability – appeal allowed – protection of sheep from harm during voyage from Australia to overseas not capable of being environmental protection or substantially related to environmental protection – observations on onus of proof of purpose under s45DD(3)- first respondent had contravened s45DB(1) Trade Practices Act 1974 (Cth) - "environment", "environmental protection." (I, B, C)

[Rural Export & Trading \(WA\)](#), and

[Rural Export & Trading \(WA\)](#) – decision 4 October 2007 - see 'Benchmark' Friday 5 October 2007.

Zaccardi v Caunt [2008] NSWCA 202

Court of Appeal of New South Wales

Allsop P, Campbell JA & Barr J

Real property – sale of land – appeal from District Court - appellant & third-named respondent were the purchasers – vendor/respondents had contended they had validly terminated the contract, pursuant to the service of a Notice to Complete that was not complied with. - primary judge had upheld their claim for damages to make good shortfall upon re-sale of the property - appeal upheld – extensive review of case law.

[Zaccardi](#) (C)



Crown & Gleeson Business Finance Pty Limited v Walster & Anor [2008] NSWSC 865

Supreme Court of New South Wales

Johnson J

Mortgages – Fair Trading Act 1987 (NSW) - settlements had been reached except on cross- claim brought by first defendant mortgagor against finance broker - default under mortgage - claim of being induced by misleading or deceptive conduct and/or negligent misrepresentation to mortgage home - representation made that long-term finance had been arranged - no reasonable basis for representation - relief granted – verdict for first defendant in sum of \$575,000.00.

[Crown & Gleeson Business Finance](#) (B)

Kipriotis v Royal Tiles Pty Limited & Ors [2008] NSWSC 871

Supreme Court of New South Wales

Hall J

Personal injury – negligence – occupier’s liability - first defendant’s employee asked plaintiff to assist in unloading goods – plaintiff had been injured in course of unloading – held that first defendant in breach of duty by directing plaintiff to park his trailer on slope & then to undertake unloading of container without appropriate assistance - damages – economic loss claim – domestic services claim – no reduction of damages pursuant to s151Z(2) Workers Compensation Act 1987 (NSW) - total damages assessed at \$193,774.19.

[Kipriotis](#) (I)

Willoughby Retirement Community Association v Frey [2008] NSWSC 870

Supreme Court of New South Wales

Hall J

Aged Care Act 1997 (NSW) - Aged Care Principles 1997 (NSW) - Aged Care Amendment (Transitional Care & Assets Testing) Act 2005 (NSW) - Resident Agreement – accommodation bond – detailed consideration of legislation.

[Willoughby Retirement Community Association](#) (I, B)

Griffiths v Westernhagen [2008] NSWSC 851

Supreme Court of New South Wales

Hamilton J

Family provision - adult children – relevant principles - further provision made by way of a legacy for one daughter.

[Griffiths](#) (B)



Permanent Trustee Company Limited v Gulf Import & Export Company & Anor (No 2) [2008] VSC 307

Supreme Court of Victoria

Hansen J

Costs – plaintiff had successfully sued defendants on guarantees – guarantees provided that legal costs payable on “full indemnity basis or solicitor & own client basis, whichever is the higher” – defendants conceded pre-trial costs on a party & party basis but submitted there should be no order for costs after commencement of the trial because of plaintiff’s conduct in the litigation – alternative submission that trial costs payable to plaintiff not include costs of issues of discovery & provenance of documents, defendants’ costs of which should be paid by plaintiff on indemnity basis – exercise of discretion.

[Permanent Trustee Company](#) (I, B)

Foster v Galea & Anor [2008] VSC 317

Supreme Court of Victoria

Byrne J

Employment law - accountants – first defendant left plaintiff’s business & went to work for second defendant - whether employee in breach of duty of fidelity to employer – whether employee removed confidential information -whether employee in breach of restraint clause in employment contract – judgment for defendants.

[Foster](#) (I, B)

Vink v Tuckwell (No 3) [2008] VSC 316

Supreme Court of Victoria

Robson J

Indemnity costs – litigant in person – grounds existing for departing from Court’s normal reluctance to order indemnity costs against litigant in person – order for indemnity costs.

[Vink](#) (I)

Butler v St John of God Health Care Inc [2008] WASCA 174

Court of Appeal of Western Australia

McLure & Buss JJA; Newnes AJA

Deed of release between employer & appellant employee – bar to further proceedings clause - case law considered - subsequent action by employee making claims for depression & stress – for judgment appealed from, see ‘Benchmark’ Wednesday 12 September 2007 & link below - whether deed a defence only to specific claims previously made by employee or to all claims of like nature - meaning of 'in connection with', 'arising out of' & 'in respect of' - whether deed contrary to Workers' Compensation & Rehabilitation Act 1981 (WA) - appeal dismissed. (I, B, C)

[Butler](#), and

[Butler](#) – decision 31 August – summary judgment for employer.



Freeman v Kellerberrin Farmers Co-operative Company Ltd [2008] WASC 182

Supreme Court of Western Australia

Hasluck J

Discovery - champerty & maintenance – agreement to purchase hotel - application for discovery & production of evidence relating to funding of litigation - documents not related to pleaded issues - whether evidence of any funding agreement ought be disclosed - whether alleged funding agreement constitutes an abuse of process - application for discovery dismissed.

[Freeman](#) (I, B)

Tim Davies Landscaping Pty Ltd v Perron Investments Pty Ltd [2008] WASC 178

Supreme Court of Western Australia

Master Sanderson

Property law - application to discharge caveat - Romalpa clause in subcontractor's agreement with builder - whether sufficient to allow subcontractor to lodge caveat.

[Tim Davies Landscaping](#) (C)

Equinox Engineering & Installation Pty Ltd v Puffin Installation Services Pty Ltd [2008] WASC 183

Supreme Court of Western Australia

Martin CJ

Cross-vesting - contract work performed offshore - defendant's application for transfer of proceedings to Victoria - related proceedings in Victoria - where the balance of convenience lies at a case management stage - application for transfer dismissed, but without prejudice to defendants' capacity to reapply at some time in the future.

[Equinox Engineering & Installation](#) (C)

Commonwealth of Australia v Davis Samuel Pty Limited [No 3] [2008] ACTSC 76

Supreme Court of the Australian Capital Territory

Refshauge J

Trade Practices Act 1974 (Cth) - fiduciary duty – duty of confidence - action brought by Commonwealth to recover monies illegally taken from it in 1999 when second defendant caused sums of \$6 million & \$2.275 million to be transferred from the Commonwealth to companies associated with the applicants – second defendant had been convicted of offences relating to these two transfers – applicants/fourth & fifth defendants had applied to vacate hearing date – application dismissed. (B)

[Commonwealth of Australia](#), and

[Commonwealth of Australia](#) - see 'Benchmark' Wednesday 25 June 2008 – legal representation – comprehensive consideration of case law.

[Commonwealth of Australia](#) – decision 12 June 2008.

Key: (I) Insurance, (B) Banking, (C) Construction